REMARKS

Claims 72, 73 and 75-106 are pending in the captioned application. Claims 1-71 and 74-75 have been cancelled without prejudice or disclaimer. Claim 72 have been amended. Claims 89-105 have been withdrawn as directed to non-elected subject matter. Claim 106 has been added.

Applicant, by canceling or amending any claims herein, makes no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

Claim 72 has been amended to recite a "vector, comprising: an amplicon-6 or Tamplicon-7 sequence comprising an origin of replication, a cleavage and packaging signal, and a promoter sequence which induces expression of at least one nucleic acid sequence product in a lymphocyte cell host, the vector being configured for administration as a vaccine and capable of inducing an immune response upon administration thereof to a mammal." Support for this amendment can be found throughout the specification and claims as originally filed.

New claim 106 is directed to a method, comprising: vaccinating a subject with an effective amount of vector of claim 1. Support for new claim 106 can be found throughout the specification and claims as originally filed.

No new matter has been added.

In view of the remarks set forth below, further and favorable consideration is respectfully requested.

I. At page 8 of the Official Action, claims 72, 73 and 76-88 have been rejected under 35 USC § 102(b) as being anticipated by Frenkel (International Application No. PCT/US1994/012715).

The Examiner asserts that Frenkel anticipates claims 72, 73 and 76-88 for the reasons set forth in the Official Action.

In view of the following, this rejection is respectfully traversed.

The test for anticipation is whether each and every element as set forth is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California,* 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.,* 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131. The elements must also be arranged as required by the claim. *In re Bond,* 15 USPQ2d 1566 (Fed. Cir. 1990).

In the present case, Frenkel fail to teach each and every element of the presently claimed subject matter as required for anticipation under 35 USC § 102 (b). In particular, Frenkel do not teach, at a minimum, a vector configured for administration as a vaccine, as required by present claims 72, 73 and 76-88.

In this regard, Applicant notes that claim 72 is directed to a vector, comprising: an amplicon-6 or Tamplicon-7 sequence comprising an origin of replication, a cleavage and packaging signal, and a promoter sequence which induces expression of at least one nucleic acid sequence product in a lymphocyte cell host, the vector being configured for administration as a vaccine and capable of inducing an immune response upon administration thereof to a mammal. Claims 73 and 76-88 depend, either directly or indirectly, from claim 72.

Frenkel describes the administration of HHV-6 or HHV-7 as lymphotropic vectors for delivering DNA into lymphocytes. As indicated by Frenkel under the subheading General Description of the Invention, the object of the invention described by Frenkel is defined as providing "lymphotropic agents, i.e. agents capable of exerting therapeutic effects on lymphatic cells." Further, Frenkel describes the agents exerting therapeutic effects on lymphatic cells, which is based on the ability of HHV-6 and HHV-7 to bind to the T cell marker, CD4. Specific embodiments provided by Frenkel refer to the treatment of AIDS (HIV infections), lymphatic malignancies, autoimmune disorders and T- cell pathologies. *See* Frenkel, generally.

Indeed, Frenkel teaches a vector including HHV-6 or HHV-7 sequences and optionally a foreign nucleic acid. However, ***nowhere in the cited reference does Frenkel teach to the claimed vector being configured for administration as a vaccination***. As noted above, all the embodiments provided in Frenkel relate to vectors that encode a therapeutic agent, e.g., a toxin, an inhibitor or an antisense sequence. Other embodiments relate to vectors which encode an enzyme (for complementing enzymatic deficiency) or a growth factor. Despite the wealth of examples in the cited reference, Frenkel does not mention or suggest the configuration and use of the presently claimed vector as a vaccine.

In view of the forgoing, Applicant submits that Frenkel does not teach each and every element of the subject matter described in claims, as required for anticipation under 35 USC § 102 (b). Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

II. New Claim 106

New claim 106 is directed to a method, comprising: vaccinating a subject with an effective amount of vector of claim 1. Applicant respectfully submits that new claim 106 is both novel and non-obvious. Accordingly, Applicant respectfully requests an indication that all of the pending claims are now allowable.

CONCLUSION

In view of the foregoing, Applicant submits that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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